Alberta JUSTICE

Victims of Family Violence Information and Rights

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INTRODUCTION

This publication is intended to provide general information only. If you require specific legal advice, please consult the appropriate legislation or contact a lawyer.

Violence in the home strikes at the heart of society. Anyone in a violent relationship experiences a loss when the one place where they should be safe and secure is a place of danger. Family violence has traditionally been viewed as a social or family problem. In fact, it is a crime that requires police intervention.

It is a criminal act for your partner to assault you, just as it is a crime for any individual to assault another. As a victim of family violence, you are entitled to the maximum protection from harm or abuse permitted by law.

As an abuse victim, you may feel confused, fearful, angry and frustrated about being involved in an abusive situation. Some of your feelings may be:

- I should protect my partner.
- I don't know what to do.
- It's my fault.
- If I change, it will stop.
- Maybe things will improve.
- It only happens to me.
- I'm afraid if I try to leave, my partner will hurt me or my children.
- I feel so trapped.
- I have no money.
- I'm really scared.
- If I leave, my partner will find me anyway.

It is important to realize that you are not to blame and that you are not responsible for your partner's actions.

Physical violence rarely occurs only once. Unless proper intervention occurs, the violence becomes more severe or more frequent. You might sustain serious injuries as a result of this violence - injuries like broken arms, cracked ribs and concussions. If you are pregnant, you may be punched or kicked in the stomach. In addition to being assaulted, you may also experience sexual, financial or emotional abuse.

You do not deserve to be abused. Family violence is a crime. There is help for you to protect yourself and your children.

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TYPES OF ABUSE

There are many types of abuse. Physical and sexual abuse are described in the *Criminal Code* as

"assault." The *Protection Against Family Violence Act*, which came into force June 1, 1999, refers to "family violence." There is a lot of similarity between the various definitions. While each case is unique, victims commonly experience some of the following:

Family violence under the *Protection Against Family Violence Act* includes any act, threatened act or failure to act that causes injury or property damage (or causes a reasonable fear of injury or property damage). To qualify as family violence, these acts must be carried out with the intention to intimidate or harm a family member. Forced confinement and sexual abuse are also part of this definition. What is not included are those situations where a parent uses force to correct a child. However, the force used must be reasonable in the circumstances.

Physical abuse includes many degrees of physical violence such as pushing, shoving, slapping, kicking, punching, hitting, spitting, pinching, pulling hair, choking, throwing things, hitting victims with an object, and using or threatening to use a weapon.

Sexual abuse is making victims do any sexual acts they do not want to do.

There are other kinds of abuse that are unacceptable but not punishable by the *Criminal Code*. There are also abusive situations where a protection order under the *Protection Against Family Violence Act* would not be available but where other legal remedies might be possible:

Financial abuse occurs when your partner does not allow you to have money or any control over money. This could include running up large debts in your name or selling your possessions without permission. It could also mean that you are not allowed to have a job so you are dependent on your partner for money and survival.

Isolation occurs when you are isolated from your family, friends and community as a way for your partner to stay in control. Your partner may be extremely jealous of any contacts you have, forbid you to have contact with anyone, or monitor your phone calls, mail or daily activities. Sometimes your partner may use intimidation or threats to control you.

Emotional/psychological abuse can cause anxiety and depression and cause you to withdraw from everyone or everything around you. Examples of this type of abuse include insulting your family or friends, ridiculing your beliefs, race or religion, using constant put-downs, threatening suicide if you leave, keeping you prisoner in your home, threatening to take the children if you leave and threatening to have you deported.

All of these are defined as abuse and you should be aware that any one of them may lead to another. Most abuse is incremental, escalating over time. Recognize these symptoms and understand your choices when making a decision to stop the violence.

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CYCLE OF VIOLENCE

Research and experience show that violence in a relationship follows a cycle. The tension builds over a period of time - days, weeks, months or even years. Then comes the assault, which is followed by a period of peacemaking, often referred to as the "honeymoon" phase. Many believe that abused partners do not experience a true "honeymoon" phase once the cycle of abuse has begun. This may more accurately reflect the abuser's state.

Phase one - tension build-up

- You can sense your partner's edginess.
- You are unable to discuss the underlying problem with your partner.
- Your partner becomes verbally abusive.

- You may feel the abuse is deserved.
- In order to cope, you deny that violence will occur and believe that it can be controlled.

Phase two - violent episode

- The tension builds until it becomes unbearable. You may even provoke violence to get it over with. Your partner loses control and acts violently.
- It may begin with a push or shove. With time, it escalates to a slap, kick or punch, then possibly to the use of weapons, resulting in more serious injuries.
- Your partner claims not to want to hurt you, just to teach you a lesson.
- Your partner justifies his/her actions and blames you.
- Both you and your partner minimize the seriousness of the injuries.
- You accept the blame.

Phase three - honeymoon

Your partner:

- fears you will leave the relationship.
- is worried and tries to make up.
- becomes charming and manipulative.
- believes anger can be controlled and it will never happen again.

You:

- want to believe your partner.
- may be showered with gifts (flowers, etc.).
- begin to feel responsible for the abuse.

In advanced stages of abuse, the honeymoon period may be reduced to a day without violence.

If you look at your own relationship with your partner, you may relate to this cycle of violence. As the violence is not constant, you can often be confused, particularly when the abusive partner has positive traits as well. Being needed can be a powerful incentive to stay in a relationship. It can create a strong belief that things will get better. But once violence has begun, it will need outside intervention to stop.

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WHAT ABOUT MY CHILDREN?

Studies show that the effects on children living in an abusive environment may be harmful and lasting. Some children learn to accept violence as a normal part of family life and will often mimic their parents and become violent themselves.

If a parent remains in an abusive home, children learn there are few consequences for violent behaviour. They become confused in their feelings of love and hurt. Their feelings toward their parents may also be confused and this may result in losing respect for them or even directing abuse toward them. Children may grow up to abuse the partners they choose or accept violence in relationships because they think of violence as a normal part of a relationship.

Children who observe violence may:

- feel frightened, confused and unhappy.

- behave aggressively, become belligerent or withdrawn and act fearful.
- become depressed or even suicidal.
- feel responsible for the violence.
- exhibit self-destructive, accident-prone behaviour.
- have physical complaints such as headaches and stomach aches.
- have night-time difficulties such as insomnia, nightmares and bedwetting.
- seek punishment with behaviours such as lying or stealing (believing punishment means love).
- adopt rigid gender role identification:
    - girls can become withdrawn, passive, and given to approval-seeking behaviour.
    - boys can become aggressive, bullying and given to self-destructive behaviour.

Your children deserve better. Although removing them from a violent home or having your abusive partner leave will not automatically remove the damage already done, it is a first step in encouraging a positive change in their lives. Counselling is available to help children with the confused emotions or trauma they are experiencing.

If you decide to leave an abusive situation, take your children with you. If the police are involved, they can escort you to a safe place.

As a parent, you share a responsibility with your partner to protect your children. The cycle of violence can be broken - you and your children deserve to be protected.

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WHAT TO DO IF YOU HAVE BEEN ASSAULTED

- Call the police (or have a neighbour or friend do it for you). Use 911 (or your local police emergency number if you do not have 911 service) if the threat of danger is immediate.
- Try to give the police your name, address and phone number. Provide as much additional information as circumstances allow.

Let them know if:

- your life is in danger.
- you are injured and will need an ambulance.
- there are weapons being used and if so, what type.
- there are drugs and alcohol involved.
- there are children (or others) present in the home.
- there is a history of violence.
- there is a protection order, peace bond or restraining order in effect.

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POLICE INTERVENTION: WHAT TO EXPECT

Calling the police to intervene in a family violence situation is not an easy step but remember, **family violence is a crime**. Police can defuse a crisis situation and they can also offer you immediate assistance if you require it. In some centres, crisis workers are available to assist police in arranging professional follow-up.

When the police arrive at your home, they must take charge of the situation, make an assessment, find out what is going on and make sure nobody gets hurt. The police may separate you and your partner and ask both of you questions about what occurred. They may ask questions which you might find awkward, but

they must be able to find out all the relevant facts and information.

It is important that the information you give the police is complete and factual, as it will lead to a decision as to whether they believe there are reasonable and probable grounds to lay a charge or whether an application for an emergency protection order is appropriate.

Make sure you tell the police if there is a protection order, peace bond or restraining order in effect. Be prepared to show the police a copy of this document or any other court document that can tell the police about any relevant criminal or civil matters between you and your partner.

Victims' assistance units exist within many police services. Ask to be put in contact with them. They can help with crisis intervention, practical assistance, information referrals and courtroom education and support.

Based on the circumstances, the police may proceed as follows:

1. Lay a charge

If the police have reasonable and probable grounds to believe an assault or other crime has taken place, they will lay a charge under the *Criminal Code*. Once the police make a decision to lay a charge, they must consider whether to make an arrest. To effect an arrest, the police must consider all the circumstances leading up to the charge, including the need to prevent offences from occurring or continuing. It is very important that you let the police know if you fear for your safety or your children's safety should your partner be released.

If the police proceed by arrest, your partner will have the right to a bail hearing within 24 hours. This bail hearing (or show cause) may be in front of a justice of the peace or a Provincial Court judge. Unless there is sufficient evidence indicating custody until the court date, your partner will be released.

If you feel you will be in danger if your partner is released, inform the police and request that the court impose release conditions stating that your partner cannot contact you.

If the police do not believe an arrest is necessary, they will issue an appearance notice requiring your partner to report for fingerprinting on a certain date and to appear in court at a later date.

2. Not lay a charge

If the police believe there is not enough evidence to initiate a charge, they will let you know. You can ask that this decision be referred to a supervisor for further review if you disagree with it. If, after this review, you are still unsatisfied with the result, you can seek independent legal advice for appropriate criminal or civil action.

The police only have the authority to remove abusers from their homes if there is a protection order which specifically says that they can do this. The police can assist you in applying for an emergency protection order. If an emergency protection order is not obtained, the police can assist in taking you to a safe place.

The police can also be present when you remove personal belongings from your home, whether at the time of the initial intervention or at a later date. You should take:

- personal clothing
- house keys
- charge cards
- bank books
- medication
- personal identification

- children's clothing
- special toys and blankets for the children

Property that is jointly owned should not be removed.

3. Apply for an emergency protection order

Whether or not the police decide to lay a charge, the situation may be one where it is appropriate for the police to apply on your behalf for an emergency protection order. Such applications are made under the *Protection Against Family Violence Act*.

With an emergency protection order, the police can temporarily remove an abusive family member from your home. The order can say that the person involved may not contact you or come near your home, your workplace or the school you or your children attend. This order may also allow you to have the exclusive right to live in your home for a specified period of time. The police can, if authorized, also take away all guns, knives and other weapons.

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EMERGENCY PROTECTION ORDERS

1. How is an emergency protection order granted?

With your consent, the police can apply for an emergency protection order by phoning a justice of the peace. This application can be made at any time of the day or night. The justice of the peace will hear information from the police and determine if there has been family violence and if the order should be granted to ensure your immediate protection.

The emergency protection order will contain a date when it must be scheduled for review by the Court of Queen's Bench. This review must be scheduled within seven working days.

If it is granted, an emergency protection order must be served on the abusive family member (who is referred to as the respondent). Unless the justice of the peace says otherwise, this will be done by the police. Giving the respondent a copy of the emergency protection order will allow it to be enforced.

2. Review by the Court of Queen's Bench

The review of the emergency protection order will be scheduled by the justice of the peace when the emergency protection order is granted. The time for the review will appear right on the emergency protection order. It is a good idea to have legal assistance during the review. The review is done using affidavit evidence. This is written evidence that is sworn under oath.

The review of the emergency protection order allows a justice of the Court of Queen's Bench to determine whether to revoke the emergency protection order, direct that an oral hearing be held, confirm the emergency protection order, or make a new order. Any protection order coming out of the review is called a Queen's Bench protection order and it can be in force for up to one year. It may also be extended for further one-year periods.

3. What can the Queen's Bench protection order contain?

A Queen's Bench protection order can contain all the same things that an emergency protection order can plus some other things that only a Queen's Bench justice can order. In addition to prohibiting the abusive family member from contacting you, requiring the abuser to leave the family home and dealing with the removal of personal belongings, the order may also:

- require the abusive family member to reimburse you for the monetary losses you suffered as a direct result of the family violence,
- allow you to temporarily possess specified personal property and prohibit either you or the abusive family member from dealing with property that you both have an interest in,
- require the abusive family member to post a bond to ensure compliance with the terms of the order, and
- require the abusive family member and any other family member to receive counselling.

4. What happens if my partner does not follow the protection order?

A protection order is an order of the court. A breach of the order can attract either criminal or civil remedies. Section 127 of the *Criminal Code* states that any person who, without reasonable excuse, disobeys a court order is guilty of an indictable offence and is liable to imprisonment for up to two years.

Furthermore, the Court of Queen's Bench has the power to punish and cite in contempt those who disobey an order of the court, including an order made under the *Protection Against Family Violence Act*. The punishment could include a fine or imprisonment.

Neither remedy applies to the breach of that part of an order that requires money to be paid. In such a situation, the obligation would be enforced using the Maintenance Enforcement Program.

If your partner does not comply with the order, call the police. If you have a lawyer, call that person as well.

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WHO MAY WITHDRAW A CHARGE?

Once a charge has been laid, neither you nor the police have the authority to have it withdrawn. Only the Crown prosecutor has this authority. Alberta Justice's policy is that charges of spousal abuse normally proceed, even when the victim does not want to lay charges or proceed with charges.

Going through the court process will reinforce to your partner that abuse toward you is a crime and will not be tolerated. If your partner is found guilty, the judge may require your partner to participate in counselling to change behaviour patterns and learn how to address problems in a non-violent manner.

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THE COURT PROCESS

1. First appearance

After charges are laid, your partner will be required to appear in court before a Provincial Court judge. This is called the "first appearance."

In court, the charges will be read out and the judge will ensure that your partner understands them and is ready to enter a plea.

a. If your partner enters a guilty plea, the judge will either impose a sentence immediately or ask for a pre-sentence report and set another date for sentencing.

b. If your partner enters a not guilty plea, the judge will set a trial date.

c. If your partner asks for an adjournment to obtain legal advice, the judge may set another court date in the near future.

d. If your partner enters an election for trial in the Court of Queen's Bench, the judge will set a date for a preliminary hearing.

If your partner is in custody, the first appearance may include a "show cause" hearing. This is when a decision will be made about whether your partner is released or held in custody until the next court date.

2. The trial

If your partner enters a plea of not guilty, a trial date will be set. Going through a trial may be a difficult step for you, but keep in mind that it is also a major step forward in changing your abusive relationship.

As with most cases of spousal abuse, there may only be two witnesses: you and your partner. This means it is important that you cooperate with the Crown prosecutor to ensure all evidence is provided (e.g. pictures, medical documents, torn clothing, plus any notes you may have made regarding the situation).

Depending on how busy your local court is, it may be many weeks before your case goes to trial. The following outline will give you some idea of what to expect before and during the actual trial:

a. You will be subpoenaed to appear in court (a subpoena is a legal document indicating the date and time you must be in court, as well as the charge against your partner). Remember, once you are subpoenaed, you are legally obligated to appear in court.

b. The Crown prosecutor represents the Crown and will present the evidence available to prove the charges. The Crown prosecutor has the police report and statements and will prosecute based on that documentation. It is important that you be open and honest. Express any concerns you may have for your safety. If you wish to present any other information before the court, you may do so through the Crown prosecutor. This information might include prohibiting your partner from having contact with you and requiring your partner to seek counselling.

c. If you signed a statement with the police and do not have a copy of it, ask for one and review it prior to the trial.

d. Prior to your trial, it may be helpful to go to another trial (they are listed daily outside each court room) so you can familiarize yourself with the trial process.

e. You may bring friends or family members with you to the trial for support. You may also wish to contact the nearest victims' assistance program in your area to obtain information about criminal justice proceedings or for courtroom support.

f. Once you arrive at the court house, report to the Crown prosecutor handling your case. The Crown prosecutor will be at a table in the front of the courtroom. You may ask the Crown prosecutor any questions you have about the court process such as:

   - where to wait until you are called into court.
   - whether or not you must give your address aloud in court.
   - what kinds of questions the Crown will ask you.
   - whether or not you can stay in court after you have given your testimony.
   - whether you can use your notes - if you have made notes, you will have to give the Crown prosecutor a copy.

g. The Crown prosecutor will call all of the Crown's witnesses first. Then the defence lawyer will call any witnesses for the defence.

h. When you are called to give evidence, the clerk of the court will read an oath and ask you to swear to tell the truth.

i. Examples of questions the Crown prosecutor may ask you include:
   - What is your relationship to the accused?
   - How long were you in the relationship?
   - Were you assaulted by the accused on (date)?
   - Where did this assault take place?
   - Did you consent to the assault?
   - Who was present when the assault occurred?
   - What led up to this assault?
   - Were either you or the accused consuming alcohol at the time of the assault?
   - Did you sustain injuries?
   - Did you receive medical treatment?
   - Did anyone witness the injuries?
   - What is your current living situation?

j. You should expect to be cross-examined by your partner's lawyer. It is important not to overreact. Remember - you were there, not the lawyer.

k. The Crown prosecutor can question you further to clarify any points raised by your partner's lawyer.

l. It is important that you understand every question prior to answering it. If you don't understand, say so. Do not guess.

m. Your partner will be in court and may be giving testimony. It is important that you remain silent even if you do not agree with the testimony.

n. After all witnesses have provided their testimony and cross-examinations have occurred, both the Crown prosecutor and your partner's lawyer will address the court.

o. The judge will then make a decision as to your partner's guilt or innocence.

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SENTENCING

If your partner is found guilty of the charge, the sentence may be as follows:

1. **Probation**
   The judge may require your partner to be under the supervision of a probation officer and abide by certain conditions. These conditions may include compulsory counselling, no contact with you, paying restitution for damages or performing community service work.

2. **Fine**
   The judge may require your partner to pay a fine.

3. **Jail**
   The judge may sentence your partner to a period of incarceration.

The judge may impose any combination of two of the above sentences, i.e., jail to be followed by probation, probation and a fine, or jail and a fine.

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OTHER LEGAL REMEDIES

In addition to calling the police for intervention through criminal charges or an emergency protection order,

you may apply for a Queen's Bench protection order, a peace bond or a restraining order.

1. Queen's Bench protection order

The *Protection Against Family Violence Act* also allows a victim of family violence to apply directly to the Court of Queen's Bench for a Queen's Bench protection order. Legal assistance is very helpful when applying for such an order. See page nine for information on what a Queen's Bench protection order can contain.

You can apply for a Queen's Bench protection order by using a document called an originating notice. Along with the originating notice you will have to fill out an application and swear that the contents of it are true. This will give the judge information about why you need a protection order and what terms you are asking for. This originating notice and sworn application form must be served on your partner so that your partner knows when to go to court, what you are asking the court to order and the reasons you think the order should be granted. Your partner will also be able to swear information so that you and the judge know your partner's position.

If the Queen's Bench protection order is granted, it can be in effect for up to one year and it may be renewed for further one-year periods.

If a protection order is granted, you must make sure your partner has notice of it. If your partner is in court, you do not need to do anything further. However, if your partner is not there either in person, by phone or through a lawyer, you have to ensure service. After your partner has been served, you should forward a copy of the order to your local police service for entry through the Canadian Police Information Centre (CPIC) which is accessed by all police officers across Canada. Contact the police to see if other information is required.

2. Warrant permitting entry

A warrant permitting entry is not something you can apply for yourself, but it is important to know about. A warrant permitting entry is granted when someone is not allowed to see a family member and thinks that person may be the victim of family violence. Under the *Protection Against Family Violence Act*, the police can apply, usually by phone, for a warrant permitting entry. It authorizes the police to enter the home to assist or examine the family member and remove the family member if he or she agrees.

3. Peace bond

To obtain a peace bond:

a. report the incident to the police and indicate why you are worried about your safety. Get a file number from the police.
b. go to your local criminal court to arrange an appearance before a Provincial Court judge.The police or the clerks at your local criminal court may be able to assist you with your documentation.

When you appear before the judge, your evidence will be taken under oath. If the judge considers that a case has been made for compelling your partner to attend before the court, a court date will be set and a summons will be served on your partner. If a summons is issued, the Crown prosecutor's office will also get a copy of your information.

In Edmonton and Calgary, it may be possible to have a presiding justice of the peace rather than a Provincial Court judge consider issuing a summons.

If your partner disputes the issuance of a peace bond at the court appearance, the matter will be set down for a hearing. A Crown prosecutor will be in court to conduct the hearing. You will be asked to give evidence again and you may have to answer questions from your partner or from the lawyer acting for your partner. If a hearing is required, this process can take several months.

4. Restraining order

A restraining order is a court order which requires your partner to stop molesting, annoying or harassing you or your children. If you are married or living in a common-law relationship, you can apply for a restraining order by hiring a lawyer, or by appearing on your own behalf. The process is quite technical and it is advisable to have a lawyer.

A restraining order may be applied for:

a. under an existing court action, such as a divorce, or
b. on its own by commencing a court action through a Statement of Claim or through a form called "Ex Parte Application for a Restraining Order in a Family Law Situation." Information packages for the ex parte applications can be obtained at all Queen's Bench courthouses in the province.

In situations of true emergency, an ex parte restraining order may be obtained within a day or two and will be scheduled for review by the court normally in about two to three weeks. If it is confirmed at review, the order will usually continue for three or six months or, if there is an action, until the action is concluded. A restraining order is not effective until your partner is personally served with a copy.

Keep a copy of your restraining order with you. If the order is breached, call the police. Be prepared to produce the restraining order.

A certified copy of the restraining order and affidavit of service should be forwarded to your local police service for entry on CPIC. Contact the police to see if other information is required.

5. Legal assistance

Where charges are laid against another family member, you do not need to have a lawyer to appear in court as a witness on those charges. You also do not need a lawyer to obtain an emergency protection order. You should, however, consider having a lawyer when the emergency protection order is reviewed or when you wish to obtain a Queen's Bench protection order or restraining order. In addition, a lawyer may be required to investigate legal areas such as custody agreements, divorce, or any other concerns you may have.

Here are some options to consider:

a. **Dial-A-Law** provides pre-recorded tapes containing general legal information. Written copies of these tapes can be mailed upon request by telephoning 1-800-332-1091. This number also connects to Lawyer Referral. **Lawyer Referral** will give you the names of three local lawyers who deal in cases specific to your needs. For a minimal fee you can meet with the lawyer of your choice to discuss your situation.

b. **Legal Aid** will provide someone to assist you for a review of an emergency protection order. If you live in Edmonton, call the Protection and Restraining Order Project (PROP) at (780) 423-8920. In Calgary, call Calgary Legal Guidance at (403) 234-8532 or 234-9266. Outside of Edmonton and Calgary, Legal Aid will provide duty counsel. The normal Legal Aid rules for eligibility will not normally apply for a review of an emergency protection order.

   If you want to apply directly to the Court of Queen's Bench for a protection order, you can hire a lawyer privately or apply for assistance through the Legal Aid Society.

   Legal Aid provides legal services based partly on financial eligibility, which is determined through an assessment of income and assets. Your local Legal Aid office will have detailed information about eligibility rules and how to apply for funding. To find the number of your nearest Legal Aid office, contact 310-0000 or check the white pages of your phone book. You may also want to contact PROP in Edmonton or Calgary Legal Guidance in Calgary to see if they can assist.

Contact your local police, R.C.M.P. detachment, shelter or victims' assistance unit. They can help you get information about other services in your community.

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RIGHTS OF A VICTIM OF FAMILY VIOLENCE

A victim of family violence is entitled to:

- be free and safe from violence.
- the maximum protection from abuse permitted by law.
- be treated with courtesy, compassion and respect.
- information about legal rights and assistance from community resources.
- a Queen's Bench protection order, restraining order or peace bond from the courts, or an emergency protection order in urgent circumstances.

Family violence is a crime. As a victim of family violence, you are entitled to protection through the laws of Canada and Alberta. You are not alone - the police and helping agencies in your community can provide you with assistance. Reach out for help!

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